



COMMISSIONER
James R. Hine

August 29, 2003

TO: All Nursing Facilities

RE: Provider Letter #03-24
Changes to the Nursing Facility Requirements for Licensure and
Medicaid Certification

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This letter highlights changes to the Nursing Facility Requirements for Licensure and Medicaid Certification, published in the Texas Administrative Code (TAC), made by DHS as a result of the 78th Regular Session of the Texas Legislature. Please review carefully all revisions to the rules. The rule changes are effective September 1, 2003. Other legislative changes that impact nursing facilities are also highlighted.

The affected rules are listed below with an explanation or summary of the change.

§19.216 License Fees.

Veterans nursing facilities (as defined in the Natural Resources Code, Section 164.002) are now exempt from paying a trust fund fee.

§19.602 Incidents of Abuse and Neglect Reportable to the Texas Department of Human Services (DHS) and Law Enforcement Agencies by Facilities.

Facility owners and employees who have cause to believe that resident abuse, neglect, or exploitation has occurred, must make a report to DHS. A local or state law enforcement agency must also be notified when a report alleges that:

1. a resident's health or safety is in imminent danger;
2. a resident has recently died because of conduct alleged in the report of abuse or neglect or other complaint;
3. a resident has been hospitalized or treated in an emergency room because of conduct alleged in the report of abuse or neglect or other complaint;
4. a resident has been a victim of any act or attempted act described in Penal Code, Sections 21.11 (indecent with a child), 22.011 (sexual assault) or 22.021 (aggravated sexual assault), or
5. a resident has suffered bodily injury, defined "as physical pain, illness, or any impairment of physical condition" by Penal Code, Section 1.01, because of conduct alleged in the report of abuse or neglect or other complaint.

§19.1504 Drug Security.

Some current prescriptive rules have been deleted, leaving the following: medications must be stored under appropriate conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security.

§19.1510 Emergency Medication Kits.

Emergency medication kits in veterans nursing facilities may be maintained by a United States Department of Veterans Affairs pharmacy or another federally-operated pharmacy.

§19.1921 General Requirements for a Nursing Facility.

Each facility must comply with Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

The following changes to Health and Safety Code, Chapter 250, impact nursing facilities:

1. All applicants for employment (**licensed nurses and unlicensed persons**) must have a criminal history check;
2. In an emergency situation, a facility may hire on a temporary or interim basis a person not listed in the registry, pending the results of a criminal conviction check that must be requested **within 24 hours** of employment; and
3. Burglary is added to the automatic bars from employment. Burglary is both the offense defined in Penal Code, Section 30.02, and an offense under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense which contains elements that are substantially similar to the elements of an offense under Penal Code, Section 30.02.

A person may not be employed in a position the duties of which involve direct contact with a consumer in a facility before the fifth anniversary of the date the person is convicted of:

1. an offense under Penal Code, Section 22.01 (assault), that is punishable as a Class A misdemeanor or as a felony;
2. an offense under Penal Code, Section 30.02 (burglary);
3. an offense under Penal Code, Chapter 31 (theft), that is punishable as a felony (note: this is not a new requirement);
4. an offense under Penal Code, Section 32.45 (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor or a felony; or
5. an offense under Penal Code, Section 32.46 (securing execution of a document by deception), that is punishable as a Class A misdemeanor or a felony.

You may review Health and Safety Code, Chapter 250, online at:

<http://www.capitol.state.tx.us/statutes/statutes.html>.

§19.2116 Involuntary Appointment of a Trustee.

When a trustee is placed in a veterans home, the Veterans Land Board pays the trustee's fee.

§19.405 Additional Requirements for Trust Funds in Medicaid-certified Facilities.

A new methodology will be used to calculate the amount of the surety bond. In addition, facilities must comply with new requirements regarding theft of funds from a resident's trust fund account. For additional information, please see provider letter 03-23.

Other Legislative Changes

Senate Bill 826

Senate Bill 826 amended Code of Criminal Procedure, Chapter 49, to require nursing facilities to report certain deaths to the Office of the Attorney General (OAG).

Currently, Code of Criminal Procedure, §49.04(c) requires nursing facilities to report a death to the justice of the peace (JP) when the attending physician is unable to certify a cause of death and the death occurs in a county that has no medical examiner or is not part of a medical examiner's district. The amendment at Code of Criminal Procedure, §49.02, requires facilities reporting a death to the JP under these circumstances to also report the death to the OAG within 72 hours of the death. To report a death to the OAG, call toll-free 1-800-935-0897.

You may access the Code of Criminal Procedure, Chapter 49, at:

<http://www.capitol.state.tx.us/statutes/>.

House Bill 2292

House Bill 2292 made changes in the Medicaid Medical Transportation Program (MTP). Medicaid nursing facility residents undergoing renal dialysis are eligible for transportation through the MTP.

For information on these services, call 1-877-MED-TRIP. If you are calling to schedule transportation, please call at least two working days in advance and be prepared to provide the resident's name as it appears on the Med ID form, Medicaid number, nursing facility (pick up) address, dialysis center (destination) address and time of the dialysis appointment. Due to the repetitive nature of dialysis appointments, multiple appointments can be scheduled at one time. When a resident will not need transportation services, the nursing facility has the responsibility to contact MTP to cancel any previously scheduled appointments.

During the actual transport to and from the dialysis facility, a facility employee or a family member must accompany residents who have a documented need for personal assistance. The transportation costs for the required attendant, as well as the Medicaid recipient, are paid using state MTP funds. Costs for the attendant transportation outside of the trips taken by the recipient are not covered (i.e., returning the facility employee to the facility during the dialysis treatment period).

MTP rules are located in Title 25, Texas Administrative Code, Chapter 40, which can be accessed at: www.sos.state.tx.us/tac/index.html.

Senate Bill 1320

Amendments to the Advance Directives Act in Health and Safety Code, Chapter 166, provide that, except for emergency medical services (EMS) personnel, a licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's do-not-resuscitate (DNR) order. EMS personnel must be presented with a proper out-of-hospital DNR order in the form specified by the Texas Department of Health. Amendments to Chapter 166 also require facilities to provide certain written information to individuals or their families when the physician and the individual cannot agree on end-of-life treatment decisions.

Decrease in Personal Needs Allowance (PNA)

The General Appropriations Act for the next biennium and changes to Human Resources Code, §32.024(w), reduced the monthly personal needs allowance from \$60 to \$45. The amount of money residents in nursing facilities can keep for personal needs is now \$45.

Recipients of Supplemental Security Income (SSI) will receive a \$15 check from DHS to supplement the SSI check. SSI recipients will have a total of \$45 for personal use.

If you have questions about the content of this letter, please contact Marcia Bowen, R.N., Long Term Care-Regulatory Policy, at (512) 438-3529.

Sincerely,

[signature on file]

Evelyn Delgado
Assistant Deputy Commissioner
Long Term Care-Regulatory

ED:jw